

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION**

**CIVIL NO. 2:06CV11**

**STELLAR INSURANCE GROUP, INC., )  
and TOM STALLINGS, )**

**Plaintiffs, )**

**Vs. )**

**MEMORANDUM AND  
ORDER**

**CENTRAL COMPANIES, LLC, d/b/a, )  
and/or, a/k/a CENTRAL LEASING )  
MANAGEMENT, INC.; and PEO )  
MANAGEMENT GROUP, INC., d/b/a, )  
and/or, a/k/a SCI COMPANIES, INC., )**

**Defendants. )**

**THIS MATTER** is before the Court on the Magistrate Judge's  
Memorandum and Recommendation, filed September 12, 2006.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of  
Designation of this Court, United States Magistrate Judge Dennis L.  
Howell, was designated to consider pending motions in the captioned civil  
action and to submit to this Court recommendations for the disposition of  
these motions.

On September 12, 2006, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Defendants' motion to dismiss. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on September 29, 2006. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendants' motion be allowed in part and denied in part.

**IT IS, THEREFORE, ORDERED** that the Defendants' motion to dismiss is **ALLOWED IN PART AND DENIED IN PART, AS FOLLOWS:**

1. the motion is **ALLOWED**, as to the Defendant SCI Companies, pursuant to Fed. R. Civ. P. 12(b)(1), and Plaintiffs' claims as to this Defendant are hereby **DISMISSED**;
2. the motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) is **DENIED** without prejudice to renew at the close of discovery as to the

Defendants Central, d/b/a and/or a/k/a Central Leasing Management, and PEO Management;

3. the motion to dismiss the Plaintiffs' breach of contract for failure to state a claim is **DENIED**;
4. the motion to dismiss the Plaintiffs' breach of contract claim based on the statute of frauds is **DENIED** without prejudice to renew at the close of discovery;
5. the motion is **ALLOWED** as to any claim for violation of the North Carolina Wage and Hour Act asserted by Plaintiff Stellar, and such claim is hereby **DISMISSED**;
6. the motion is **ALLOWED** as to any claim for violation of the North Carolina Wage and Hour Act asserted by Plaintiff Stallings accruing on or before May 7, 2004, and such claim is hereby **DISMISSED**; and
7. the motion is **DENIED** as to any claim for violation of the North Carolina Wage and Hour Act asserted by Plaintiff Stallings accruing on or after May 8, 2004.

**IT IS FURTHER ORDERED** that the Defendants file answer or other responsive pleading on or before 20 days from entry of this Order.

**IT IS FURTHER ORDERED** that the parties comply with the Court's Local Rule 16.1 and file a proposed discovery plan on or before 45 days from entry of this Order.

Signed: October 3, 2006

A handwritten signature in black ink, appearing to read "L. H. Thornburg", written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

